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Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		✓		
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13	PA	✓			
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SUSPENSE DATE: 7 AUG

Remarks:

To 13 - In coordination with GC,
please comment to the DCI.

D/Executive Secretary

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Date

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MAX FRANKEL
Editor, Editorial Page

July 28, 1978

Dear Admiral Turner,

I have your letter to Abe Rosenthal and welcome the chance to comment on your comment on our editorial.

As I am sure you and your colleagues recognize, we are allies in seeking a way out of the muddle that cases like Snepp have created, even if we disagree on one or another proposal for getting, there.

It is our judgment and, indeed, our experience that no safeguards--existing or imaginable--ever make government censorship tolerable. Judges, even on the Supreme Court, flee in horror whenever Government invokes the magic slogan "national security" because customarily they know less about codes and bombs and spy satellites than the average Pentagon or State Department reporter. If you would have someone review the secret briefs and testimony in the Pentagon Papers case you would see how absurd some of the Defense Department's claims of secrecy were and how easy it was for any well-read person to point to the publication of the same or similar information in many other places. Some of the demands for delation from the Marchetti book showed the same tendency.

I can well understand this tendency. An official runs across a fact or statement that he knows to exist in a "secret" file and he wants to keep it unpublished. To him, and to any reviewing authority in a court or special board, it is rarely immediately evident that the same or similar information appears regularly in the newspapers, in the memoirs of the highest former officials, in trade publications, and so on. The fact is, as we demonstrated in the Pentagon Papers case, the normal exchange of information between the Executive and Congress, and the normal efforts to lobby or persuade the public of anything, regularly involve officials in the disclosure of nominally secret information. It is hardly possible to criticize a weapons program, to question a military or intelligence budget or to question the analyses or predictions of our intelligence services without dealing in "secret" but fairly widely known information. When granted the power to censor, or in claiming that power, neither government nor the judicial branches of government have shown themselves particularly reliable in distinguishing between the need to protect "ultimate" and truly vital secrets and their desire to also protect run-of-the-mill secrets, confidences and simply embarrassments.

Moreover, government is in this, as in so many other respects, a

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government of men, not principles. Robert Kennedy, Arthur Schlesinger, Richard Nixon, Henry Kissinger, William Colby, Lyndon Johnson and dozens of others are allowed one level of comment and discretion after they leave government, and mere underlings quite another. We both know that it will always be thus. There are more secrets and diplomatic embarrassments floating around in these privileged writings than Snapp ever heard of.

We on The Times editorial board do recognize the problem of government's need to retain some discipline over its employees and former employees. It is the Agee problem. On the one hand, it is unreasonable that anyone who ever works for government for a few years should for the rest of his life be subject to censorship. On the other hand, it is unreasonable and dangerous, particularly in a time of dissension and stress, for any government employee to be liberated from the obligation to keep the gravest secrets to himself.

That is why we showed, in the very editorial you commented on, some interest in Mr. Colby's recent suggestion. It seems to us not impossible, as he suggests, for the most sensitive agencies to try to write a law covering the narrow range of critical secrets--as the espionage act does now--which should not ever be published by former or present government employees without official sanction, on pain of criminal punishment. It goes without saying that this law should reach only government employees and graduates and not persons over whom government should have no authority. Just as it is a crime to disclose the design of a government code machine, it could be a crime for a former government official to disclose the name of a secret agent.

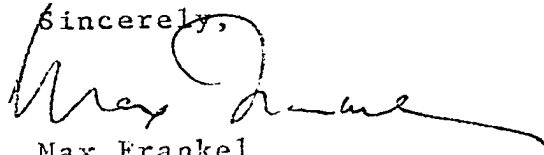
And within the framework of such a law, the Government could then provide a mechanism for voluntary review and appeal of materials that former employees propose to publish. Those who prefer safety could submit to that review. Those who are confident that they know the law and the bounds of prudence could publish without review and take their chances on prosecution. It is possible in some gray-area cases that the prosecution itself would do more harm than good; but that risk already exists in most espionage cases, or wiretap and informer cases.

I cannot emphasize too strongly my conviction that the ultimate discipline in these matters depends on agency and social morale. And central to that morale and to the discipline that ordinary officials will demonstrate is the example set by the conduct of the highest officials. When Lyndon Johnson and Henry Kissinger are free to vindicate their roles in history and to blame anyone

for what went wrong by blowing any "secret"--and in fact by selling their wares to the public as the revelation of confidences--it becomes petty and demeaning for the Government to be pursuing a few small fry. I cite these two gentlemen not because I want to see them censored (I would much prefer access to the same documents from which they spin their versions of history) but because they themselves, in office, were among the most ferocious protectors of secret information and were quick to impute the worst motives to the disclosures of others.

The fact remains, we have not done badly as a nation in this area. Some secrets have been lost, through officials high and low, and we have had to adjust to the damage. And many secrets have been pried out that either should not have been secret or, in any case, deserved publication for a higher public interest. From time to time, we may do worse or better by this record, but we can only move it a few degrees to one side or the other. It seems to me that the problem does not justify any solution that puts government into the censorship business.

Sincerely,



Max Frankel

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